

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE: . Case No. 22-19361-MBK
BLOCKFI INC., et al., . (Jointly Administered)
Debtors. .
. May 25, 2023
. 2:00 p.m.

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

TELEPHONIC APPEARANCES:

For the Debtors: Haynes and Boone, LLP
BY: RICHARD KANOWITZ, ESQ.
30 Rockefeller Plaza
26th Floor
New York, NY 10112

For the Official Committee of Unsecured Creditors: Brown Rudnick, LLP
By: KENNETH AULET, ESQ.
7 Times Square
New York, NY 10036

For the Department of Justice: U.S. Department of Justice
By: SETH SHAPIRO, ESQ.
JAMES CURT BOHLING, ESQ.
950 Pennsylvania Avenue NW
Washington, DC 20530

Audio Operator: Kiya Martin

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-mail: jjcourt@jjcourt.com

(609) 586-2311 Fax No. (609) 587-3599

1 THE COURT: Okay, good afternoon, everyone. This is
2 Judge Kaplan. Thank you for appearing remotely on shortened
3 time. This is the BlockFi Inc., et al. matter, the application
4 for TRO filed by the Committee. And today's hearing is
5 essentially, at least from my perspective, simply a status
6 conference so we can talk about scheduling and how best to
7 address what I will refer to as interesting and novel issues,
8 maybe not unexpected but certainly interesting and novel.

9 So, we have I think about 20 participants remote.
10 I'm not going to go through appearances. I'll just ask that
11 for those who wish to speak, just introduce themselves so I get
12 a sense of whose interest you're representing. I debated about
13 having an informal conference. I thought better if we put this
14 on the record just in case we want to pick some dates and
15 deadlines.

16 But let me turn to -- I guess first we'll start with
17 Committee counsel who wishes to be heard on how best to move
18 this matter forward.

19 MR. AULET: Good afternoon, Your Honor. This is
20 Kenneth Aulet of Brown Rudnick for the Committee. So from our
21 perspective there's two scheduling issues. The first is when a
22 hearing on the preliminary injunction should occur. There's a
23 couple of timing issues there. First, it's my understanding
24 that that date does not work for Mr. Shapiro from the
25 Department of Justice.

1 THE COURT: Okay.

2 MR. AULET: And June 5th and 6th are the dates in
3 which the Committee and the debtors are going to be mediating
4 the plan process. The second timing issue is that the
5 Department of Justice has filed a motion to compel in the
6 Washington State District Court which the date for an
7 opposition would be May 30th if that is not postponed and we
8 have some concerns about the timing of that and have requested,
9 though I don't believe that the Department of Justice has been
10 able to get a response yet, that that be postponed so that we
11 can have an orderly litigation process rather than having to
12 bounce between courts or seek further emergency relief.

13 THE COURT: All right, so we have the DOJ's pending
14 motion before the District Court in Washington, State of
15 Washington, and also, obviously, the return date on the
16 preliminary injunction. The Court's calendar is somewhat tight
17 in June for a variety of reasons, I guess all good from
18 attorneys' perspectives but difficult for the Court. We have a
19 lot of activity.

20 Mr. Shapiro, do you want to be heard or give me your
21 thoughts?

22 MR. SHAPIRO: There you go.

23 THE COURT: There you go.

24 MR. SHAPIRO: I do, Your Honor. There's actually a
25 third scheduling issue. This might just be a correction on the

1 docket. As Your Honor may know, under the Federal Rules of
2 Bankruptcy Procedure which incorporates the Federal Rules of
3 Civil Procedure, the United States gets 35 days versus 30 days
4 to respond to a summons and complaint once it's served. And
5 although the Committee counsel did send me a copy of the
6 summons that appears to be correct, I did want to note for the
7 Court that there's a docket entry in the adversary proceeding
8 that says that the return date for the United States is only 30
9 days. I don't think that's a big deal but I thought I should
10 note it for the Court because it should be a different date
11 than the date for the other defendants.

12 THE COURT: That's helpful. I think that's more of a
13 clerk's office process that we need addressed but I appreciate
14 the heads up.

15 MR. SHAPIRO: Oh, no problem.

16 And then as far as hearing back from the Criminal
17 Division, I just heard a short time ago that there is a
18 procedural problem. Apparently, under the Rules of Criminal
19 Procedure out in Washington where this matter has been assigned
20 to, a senior District Judge Robert Lasnik where apparently,
21 they do things differently in the criminal world than we do
22 here in the bankruptcy world and in their world they have
23 what's called a noting date. It's not a hearing date.

24 In other words, a motion is filed, any objections
25 have to be given by I think within about a week which I think

1 on this calendar would be Memorial Day. With the federal
2 holiday, that probably bumps it to Tuesday. And then, of
3 course, there's a reply date which I think is right on the day
4 of the noting date or right before the day of noting date which
5 is Friday, June the 2nd.

6 The noting date is not necessarily a hearing date, I
7 understand, under the Rules of Criminal Procedure. I have Mr.
8 Curt Bohling on the phone from the DOJ Criminal Division in
9 Washington. He can address that if you'd like. But my
10 understanding of the way it works is once all the papers are
11 submitted -- well, no ruling will be entered until all the
12 papers are submitted and those likely will not all be submitted
13 until either June 1st or 2nd and no ruling will be entered
14 before the noting date is what I've been told by the Criminal
15 Division.

16 Now, on the noting date it's possible the judge could
17 schedule a hearing or call for a hearing or he could rule on
18 the papers or he might just take it under advisement and we
19 might not hear anything for, you know, a week or two or longer.
20 There's no way to know.

21 Mr. Bohling, are you on the line? Did you want to
22 provide any clarification to Judge Kaplan?

23 MR. BOHLING: Yes, I am. Thank you, Seth.

24 Your Honor, I believe Mr. Shapiro has accurately
25 stated our understanding. This is actually a local rule in the

1 Western District of Washington. It's not universal to all
2 districts but that is my understanding of the procedure in that
3 district and my understanding of the fact that it's not on a
4 tight schedule in the same way that some civil proceedings are
5 in bankruptcy. It is very much up to the judge about how this
6 will unfold there in terms of time.

7 THE COURT: All right. I guess it lends itself to
8 the bigger picture issue. How do we reconcile these two
9 processes going forward where -- I mean I certainly want the
10 opportunity for all parties to brief the issues so that the
11 Court can make an informed decision. But there's not a lot of
12 ways to read 28 U.S.C. 1334(e) as far as which Court has
13 exclusive jurisdiction over property of the estate.

14 MR. SHAPIRO: Well, the problem, Your Honor, if I
15 might, is that we don't believe there is property in the estate
16 that's at issue here and that the criminal laws actually give
17 original and exclusive jurisdiction to the District Court with
18 respect to assets that were seized prior to the petition date.

19 THE COURT: And we're getting into the merits, but
20 can you identify a particular asset that is sought subject to
21 the warrant that is actually -- I don't want to get too far
22 afield.

23 MR. SHAPIRO: Right, right, of course.

24 THE COURT: But there are policy consequences and we
25 have two statutes that certainly speak of exclusive and

1 original jurisdiction.

2 MR. SHAPIRO: That's correct. Very interesting.

3 THE COURT: I'm sure this is fodder for great Law
4 Review articles and law school classes. I don't know if we
5 need to or we want to start down that pathway. I'm open to
6 suggestions on how to give everyone, both courts, frankly, the
7 fairest opportunity to view the applicable law and the
8 positions of the parties without prejudicing any party's
9 rights. So does anyone have any suggestions? Timing-wise, I
10 mean I don't want it to be a race between two courthouses. I
11 think that's offensive to everybody involved including the
12 Courts, you know? We went through that a bit with the Bahamian
13 courts.

14 UNIDENTIFIED ATTORNEY: Right.

15 THE COURT: It's bad enough when we're dealing across
16 the Atlantic. I hate to see us have to go through that
17 exercise 3,000 miles across our country.

18 MR. SHAPIRO: Of course, Your Honor.

19 THE COURT: I'm open to suggestions on how to
20 accommodate including having a conference with both Courts, you
21 know, with judges of both courts having feedback.

22 MR. KANOWITZ: Your Honor, may I be heard? It's
23 Richard Kanowitz, Haynes Boone, on behalf of the debtor?

24 THE COURT: Yes.

25 MR. KANOWITZ: Yes. Hi. Thank you for scheduling

1 the conference. I think it's appropriate for us to have this
2 type of discussion. For months we've been working on this
3 issue with the DOJ and one of the issues was should we come
4 before Your Honor so this call plays out, you know, timely and
5 appropriate fashion or should we do something else and clearly,
6 we went with the -- we're going to go with the stipulation in
7 front of the District Court and whoever has rights to appear
8 there, can appear there. But we are, you know, in sort of a
9 procedural quagmire here.

10 My reading of the motion sought by the DOJ is to
11 abide by the deal that the debtors have worked out which is
12 that not all of the assets or collateral, however you want to
13 phrase it, no prejudice using any of the terms today, gets put
14 over to the Washington State Court, right? We're talking about
15 -- and I know the criminal indictment is under seal, but we're
16 talking about a magnitude potentially of \$50 million leaving
17 the estate as opposed to 24 or \$28 million leaving the estate.
18 That's the difference between us being able to utilize the
19 setoff rights or not.

20 And, you know, we could talk about what happened vis-
21 a-vis the Robinhood shares and the FTX disputes and the
22 emergent disputes and why the debtors have taken the approach
23 they have taken, but the bottom line as I read the motion that
24 was filed in Washington and it is clear they're seeking the
25 transfer of the assets and we are obligated now to hire local

1 counsel and put in papers by June 2nd, sorry, the 30th what the
2 position of the debtors will be which will clearly be to comply
3 with the law and to also provide notice of Your Honor's TRO
4 which prohibits the transfer of the subject assets.

5 So while the District Court may very well rule or not
6 rule come June 2nd on directing the debtor to do that, transfer
7 the assets, Your Honor has prohibited the transfer. So we are
8 stuck here where you may have competing orders or you may have
9 to undo certain orders entered. So I don't think it behooves
10 anybody to move forward on any of these motions until we could
11 get a concrete plan because all that we're doing is spending
12 estate assets to figure out the situation.

13 You are right. There are a lot of novel complex
14 issues here. The debtors have been down this road for six
15 months and we look forward to working with the Committee if we
16 can and the DOJ as we always have been to try to see if we
17 could bridge the gap, but if we can't, we'll present our
18 position to Your Honor in the appropriate fashion. But I don't
19 think we should rush this. I don't see an emergency here. The
20 assets are not leaving the estate one way or another and I
21 think the professionals should be able to work with the Courts
22 to try to get a comity between both the Bankruptcy Court and
23 the District Court. That's our view and we stand willing,
24 ready and able to listen to Your Honor or the District Court as
25 appropriate.

1 THE COURT: Thank you, Mr. Kanowitz. And I
2 appreciate the debtors' difficult position. Certainly the
3 debtor wants to reduce the prejudice, mitigate the prejudice to
4 the estate in any turnover of assets but I have to appreciate
5 the Committee's concern that what's being requested is a
6 release of non-criminal funds or assets that are attributable
7 to non-criminals, third parties, other victims in this
8 bankruptcy.

9 I agree with Mr. Kanowitz that I don't see the
10 urgency in having to have either of these motions resolved
11 without proper briefing and opportunity.

12 MR. SHAPIRO: Could I address that, Your Honor?

13 THE COURT: Yes. I was going to say there's no
14 danger in the funds being lost.

15 MR. SHAPIRO: Well, there could be and I would like
16 to address it.

17 THE COURT: Well, let me hear. Go ahead.

18 MR. SHAPIRO: Okay. You know, I mean first of all,
19 Your Honor, BlockFi is six months late and responding to four
20 court orders requiring them to turn over this money. We've
21 been negotiating but, you know, it quite honestly has just
22 dragged on way too long. The assets are not property of the
23 estate and we, you know, we're concerned that as you head
24 towards confirmation of a plan, if we were to get some kind of
25 ruling in the Bankruptcy Court turn over the money that the

1 Committee or the debtors, the money could get distributed and
2 now you would have authorized a distribution of money in a
3 bankruptcy case in violation of federal criminal law and we
4 just can't allow that. Seizure is permitted --

5 THE COURT: There are a lot of assumptions you just
6 made, respectfully. There's the ipse dixit as to what is
7 property of the estate but the process -- I don't know what
8 you've witnessed in this bankruptcy unfortunately that suggests
9 anything is going so quickly that can't be stopped.

10 MR. SHAPIRO: No, I understand, Your Honor. All I'm
11 trying to say is while Your Honor does have jurisdiction to
12 determine, you know, whether the automatic stay applies, that
13 jurisdiction is concurrent with the District Court in
14 Washington State and so seizure is permitted by the criminal
15 forfeiture laws in order to ensure that the property is
16 available for forfeiture at the conclusion of the criminal case
17 that it's given to victims.

18 Here, none of the creditors in this bankruptcy case
19 have been identified as victims of the crime. These are
20 individuals. It's a case against individuals who committed
21 wire fraud and conspiracy to commit money laundering. The
22 creditors committee nowhere in their papers identifies a single
23 creditor that was a victim of that crime. They are simply a
24 creditor of this estate if they have an allowed claim but they
25 are not a victim of the crime and we cannot let the bankruptcy

1 courts interfere with criminal cases and criminal forfeiture
2 proceedings. That's the reason 362(b)(4) was created in this
3 situation. It's the reason why the Criminal Code and statutes
4 give the District Courts original and exclusive jurisdiction
5 over criminal forfeiture proceedings.

6 I mean, Mr. Bohling, you're on the line. If there's
7 anything you'd like to add, I think that's the position of the
8 Justice Department.

9 THE COURT: Well, that's understood.

10 Well, Mr. Bohling, let me hear from you if you want
11 to.

12 MR. BOHLING: Mr. Shapiro has eloquently stated the
13 position of the United States here. I agree.

14 MR. AULET: Can I respond on behalf of the Committee?

15 THE COURT: That's fine. Let me hear from the
16 Committee. Let me reiterate, this is not the underlying
17 hearing on the preliminary injunction. We can turn it into
18 that but then I'm not sure we're advancing the process.

19 Mr. Aulet?

20 MR. AULET: Yes. So I'll just avoid going into the
21 merits besides saying that, you know, we disagree with much of
22 what the debtors said except for the scheduling issue and we
23 disagree with the DOJ on their legal contentions.

24 But I agree with the Department of Justice that this
25 should be resolved prior to a plan being confirmed if at all

1 possible but it is not something that needs to be resolved by,
2 for example, June 2nd. And the Department of Justice has
3 asserted that the Committee is essentially only a creditor.
4 One of the issues that we've raised is that we believe that we
5 should be representing the estate if there are any proceedings
6 that should be occurring in the Washington District Court
7 which, of course, we dispute.

8 But that said, what we're here for today is a
9 scheduling issue and I think that the appropriate thing to do
10 would be to put off the May 30th deadline for the debtors
11 and/or the Committee to file any response to the motion to
12 compel either by having that withdrawn without prejudice or by
13 having the, I'm not sure what exactly the procedure would be
14 under the local rule, but to move that June 2nd date that sets
15 the response deadline while all the parties can confer on what
16 an appropriate schedule is to brief these issues so that
17 they're resolved on the merits rather than on, you know, who
18 got to the courthouse first and who has or does not have
19 standing at any particular time so that we can get this
20 resolved by, you know, mid-July or end of July so that if
21 there's a plan that's confirmed, we know what's being
22 distributed under that plan.

23 MR. SHAPIRO: Your Honor, the question of standing is
24 also disputed because in a criminal proceeding the Committee --
25 neither BlockFi nor the Committee would have standing to be

1 heard. They simply would be dismissed away by the District
2 Court judge because they're not representing a victim of the
3 crime and they're not asserting some kind of, you know,
4 interest in the property that gives them the right to be heard
5 at the District Court level.

6 Mr. Bohling, did you want to provide any
7 clarification on that?

8 MR. BOHLING: I agree with that. That would be our
9 position. The seizure warrant has already been entered by the
10 Magistrate Judge in Washington.

11 MR. SHAPIRO: And that makes it a court order.
12 Right.

13 MR. BOHLING: Yeah, that really ends the matter. And
14 certainly our position would be that it is primarily with the
15 District Court now to decide the motion to compel which we
16 believe should be done expeditiously.

17 THE COURT: All right, then I'm at a loss to
18 understand how you would expect any third party that takes an
19 interest in these assets that are being sought to be turned
20 over to argue and to protect their rights if you're eliminating
21 both the debtor and the Committee from taking a position out in
22 Washington.

23 MR. SHAPIRO: Oh, they would have a right, Your
24 Honor, down the road. After the criminal conviction there
25 would be a criminal forfeiture proceeding and in that

1 forfeiture proceeding, whether it be an ancillary proceeding or
2 a mission proceeding, they could attempt to try to be heard.
3 But even in those proceedings if they don't comply with
4 criminal law and can establish that they have standing to be
5 heard, you know, they might not get heard. They possibly could
6 get heard if they're able to satisfy the criminal law statute
7 but that's a different standard than a creditor trying to be
8 heard in a bankruptcy case to be fair to Your Honor. It is a
9 different legal standard under the criminal laws about whether
10 you have standing.

11 MR. AULET: And, Your Honor, we'd respectfully
12 disagree with that point. We believe that the estate and if
13 it's the debtors or the Committee or both have the right to
14 represent the estate have the authority to challenge the motion
15 to quash on the grounds that the assets are sought to be
16 obtained by the seizure warrant were turned over and it's our
17 position that those are an unsecured right to payment which is
18 why it's an issue for this Court and to move to quash the
19 warrant because it seeks property that is property of other
20 people and not what was described in the warrant and that's the
21 sort of thing that we would believe that if Your Honor believes
22 that this should be in Washington, then we disagree with that
23 and believe that 28 U.S.C. 1334 is clear that even if there's a
24 dispute over if something is property of the estate or not,
25 that is an issue for Your Honor to decide.

1 MR. SHAPIRO: May I, Your Honor? Let me give you a
2 cite, Your Honor. There's a criminal statute that basically
3 stands for the proposition that once the United States has
4 commenced the forfeiture of property in a criminal case, third
5 parties cannot seek release of the property seized or
6 restrained for criminal forfeiture until the conclusion of the
7 criminal case. That's 21 U.S.C. Section 853(k). There's
8 actually a Third Circuit case on point, United States v.
9 Nicoll, 711 F. App'x 108, 110, 111 (3rd Cir. 2017) and United
10 States v. Lavin, 942 F.2d 177, 182 (3rd Cir. '91).

11 So, I don't want to get too much into the merits but
12 there are really only two grounds, Your Honor, for a party to
13 be heard under Title 21, Section 853(n). It's where the third
14 party had an interest superior to the defendant's, which in
15 this case we don't believe the Committee could assert that but
16 if they have it, they'll have a right to be heard on that one
17 day, and the other is where the third party was a bona fide
18 purchaser for value who is reasonably without cause to believe
19 the property was subject to forfeiture and that's all laid out
20 in 21 U.S.C. Section 853(n)(6)(a) and (6)(b).

21 So, I just want the Court to note because I don't
22 know how often the Court has had criminal cases that, you know,
23 interfere with the Bankruptcy Court's notion of jurisdiction
24 but this is a completely different type of case, one where the
25 criminal court has already exercised jurisdiction over the

1 asset and under the Princess Lida Doctrine, the Bankruptcy
2 Court should simply defer to the Criminal Court and let the
3 Criminal Court make the decision.

4 THE COURT: Well, I understand the DOJ's position and
5 I'll ignore what I view as disrespectful as far as notions of
6 jurisdiction. I tend to make decisions based on more than
7 simply notions. In fact, what I think is appropriate is to
8 afford this Court the same respect that you would afford any
9 Court and the ability to make a decision based on a proper
10 presentation. And I'm not denigrating what you're doing. I
11 understand the position but you cannot expect the Court to make
12 a decision based on citations discussed in a status conference
13 and what I'm trying --

14 MR. SHAPIRO: We're not, Your Honor.

15 THE COURT: What I'm trying to do is secure a fair
16 and balanced opportunity for both the District Court and this
17 Court to make an educated and informed decision knowing that
18 there really is no prejudice and to have additional time taken.
19 Notwithstanding your concerns, I can give you this Court's
20 commitment. There is never going to be a plan confirmed that
21 distributes these assets before a proper resolution of this
22 issue. It's not going to happen.

23 MR. SHAPIRO: Thank you, Your Honor.

24 THE COURT: That's not how I operate and it's not how
25 I think any Court would treat it. I detest races to the

1 courthouse in any fashion.

2 MR. SHAPIRO: And we're not trying to be
3 disrespectful in any way, Your Honor, but understand that
4 what's happening here is itself a violation of federal criminal
5 law. The Committee had no authority to bring that lawsuit and
6 they violated criminal law by doing it. They are now
7 interfering with a criminal forfeiture case and there are
8 consequences for that. So, you know, we don't want to push too
9 hard on that but that's effectively what it is and that's why
10 we're saying like this can easily be dispensed with by, you
11 know, at some point just letting the District Court make its
12 decision and let the Bankruptcy Court abide by it.

13 THE COURT: So the position of the DOJ is they will
14 not honor any order of this Court, is that what you're telling
15 me?

16 MR. SHAPIRO: No, I did not say that, Your Honor. I
17 just said we were asking if you would defer under, you know,
18 the Princess Lida Doctrine, or otherwise, to the fact that the
19 District Court in a criminal forfeiture case has exclusive
20 jurisdiction over assets that have been seized before the
21 Bankruptcy Court.

22 THE COURT: I am happy to so defer once I've been
23 convinced that it's proper to do so and I'm trying to secure
24 the opportunity to make an informed decision. I say a lot of
25 things tongue in cheek. I respect what the DOJ is doing and

1 its obligations but I have an obligation as well. The
2 obligation is to the bankruptcy estate and all the stakeholders
3 and it's not to make a rash decision as to, especially when
4 we're talking about a lot of zeroes at issue and the dollars
5 that are being transferred and a significant portion.

6 MR. SHAPIRO: Absolutely, and I respect Your Honor
7 and I respect this Court, I respect -- but, you know, I'll
8 defer to Mr. Bohling.

9 Mr. Bohling, is there any flexibility on the Criminal
10 Division's end here?

11 MR. BOHLING: Let me talk to my colleagues. I'm in
12 the airport today, you know, on travel. But, certainly, I
13 think Mr. Shapiro has outlined the basics of our position which
14 is very strongly that we believe that this is the District
15 Court's decision, that the District Court has jurisdiction over
16 these assets because of the issuance of the seizure warrant.
17 So I mean that is our position and obviously, I certainly
18 respect the Court and understand the competing interest here
19 but, you know, that certainly is our legal position. I think
20 Mr. Shapiro has stated it quite well.

21 THE COURT: Can we secure the time to have that
22 issue, the proper jurisdiction of the Court briefed
23 understanding that the funds are not going anywhere?

24 MR. BOHLING: I think one of the outgrowths of our
25 position, Your Honor, is that the District Court should be able

1 to decide in the first instance the motion to compel. That is
2 the essence of our position.

3 MR. KANOWITZ: Your Honor, may I be heard on that?

4 THE COURT: Yes, please.

5 MR. KANOWITZ: I mean, clearly what's going to end up
6 happening is we're going to have local counsel file papers
7 where we alert the District Court of Your Honor's order so that
8 unless the District Court changes its order, that order is
9 going to be stayed by virtue of the terms and conditions,
10 right, because you'll have two competing orders on one
11 directing transfer and one prohibiting transfer so then we'll
12 have to either reach out to the District Court after that
13 motion to compel is granted and then have further hearings in
14 Your Honor's court to determine some of the key issues.

15 You know, these are issues that we've discussed with
16 the DOJ all along in our relationship and have come to certain
17 conclusions and today is not the day to explain what the
18 debtors' view is the law and the process that plays out. But
19 the expense to go through multiple, multiple hearings instead
20 of just simply two to get Your Honor's approval, direction for
21 the estate as well as then having the District Court make
22 decisions however it sees fit vis-a-vis the criminal process.

23 What I'm hearing is, unfortunately, the debtor has to
24 put in papers, hire counsel, abide by the District Court
25 subject to whatever Your Honor rules at a future preliminary

1 injunction hearing which will be also putting in papers on. I
2 mean that's where we're at which is exactly where we started a
3 half hour ago.

4 THE COURT: I agree, Mr. Kanowitz, we haven't made
5 much progress and as little to do today other than set a date
6 for the preliminary injunction hearing. I have an order that's
7 out there. The District Court will do -- I certainly can't
8 dictate to the District Court what it can and cannot do. I
9 have an order that directs parties to refrain from certain
10 actions. The parties will do what they deem appropriate. So
11 at this juncture other than fixing the time frame for a return
12 date on the preliminary injunction, I'm open to other issues
13 but I think that's paramount.

14 MR. SHAPIRO: Mr. Bohling, didn't you say that you
15 needed to talk to DOJ Management to see whether or not you had
16 anything else to add to help the judge figure out this
17 procedural quagmire that we're in?

18 MR. BOHLING: I'm happy to do that. I don't think
19 our legal position is going to change.

20 MR. SHAPIRO: Okay.

21 MR. BOHLING: And I certainly -- I understand it's
22 not necessarily popular but I believe it's correct and that's
23 the essence of our position is that this is something that the
24 District Court should get to decide and I think for many of the
25 reasons that Mr. Shapiro explained that this is overdue.

1 THE COURT: Well then let's discuss a date for the
2 return date of the preliminary injunction.

3 Mr. Aulet?

4 MR. KANOWITZ: Your Honor?

5 THE COURT: Yes.

6 MR. KANOWITZ: Sorry. I was going to say the
7 parties met and conferred on that --

8 THE COURT: Yes.

9 MR. KANOWITZ: -- and subject to Your Honor's
10 availability. Does June 15th work for a hearing? We see this
11 and we spoke really as something that's going to be oral
12 argument on a fact pattern that I think everyone has agreed to.
13 I mean most of these issues are legal. Maybe it's some mixed
14 question of fact and law but I don't think anybody is going to
15 want witnesses or those things. I mean we've discussed this
16 but I'll let the Committee and the DOJ talk through those
17 issues. So, I see this as, you know, a hearing that we could
18 either do in person or by Zoom, a 90-minute type of hearing.
19 If Your Honor is prepared to do that, the 15th works for us,
20 again, subject to Your Honor's approval.

21 THE COURT: Mr. Shapiro, how does that work on your
22 end?

23 MR. SHAPIRO: If we could get a stipulated fact
24 record, Your Honor, with the indictment, the four seizure
25 warrants/orders and I believe there was one other document, a

1 bill of particulars into the record without any kind of
2 objection, I ask the Court respectfully to take judicial notice
3 of those, we may be able to do this without a witness, Your
4 Honor. So it's a question of getting those exhibits into the
5 record.

6 THE COURT: I would think you all could. It doesn't
7 seem to be, at least anything that I've read or heard to date
8 suggests that there's factual issues at play other than
9 possibly the disposition of funds is deposited by these
10 defendants and how they made their way through BlockFi's
11 various accounts and activity but even that should be --

12 MR. KANOWITZ: And can I touch on that, Judge --

13 THE COURT: Yes, please.

14 MR. KANOWITZ: -- because that's a key issue, right?
15 You know, one of the issues we talked about earlier with the
16 DOJ is you're looking to seize assets. What if they don't
17 exist? What if we can't identify them? And, you know, the
18 Committee put it out there in their papers and I don't know if
19 anybody is going to have a witness to be able to give you that
20 says these assets that were actually given by the defendants,
21 you know, the criminal defendants still exist. It's going to
22 be unknown and there's just going to have to be certain
23 assumptions made that like assets exist as opposed to specific
24 assets and does that matter because that issue is not going to
25 be able to determined at the preliminary injunctive hearing. I

1 could tell everybody that now.

2 THE COURT: Well, I will certainly be --

3 MR. SHAPIRO: What could be determined, Your Honor,
4 and if I might, I mean what could be determined is that the
5 debtor was prepared to stipulate of what the amounts were in
6 those accounts on the day that the seizure warrants were served
7 and what they were able to turn over. So, the asset of it
8 being some unknown amount. The debtors have agreed as to what
9 the amounts actually are.

10 MR. KANOWITZ: We have the coin count exactly down.
11 We have the values down on multiple different times, so the
12 stipulation that we have is the exact coin count and the exact
13 values as of November 16th, less the loan amounts due plus
14 interest, and then the excess goes to the Government. That's
15 the way the stipulation reads. That's what we'd be able to put
16 into the record as a stipulated fact.

17 MR. AULET: And, Your Honor, I don't think that the
18 Committee would object about what the, you know, the Notional
19 account balance was on those accounts. We would object to any,
20 you know, attempted entry of the stipulation as an admission
21 that the specific assets that the accused criminals deposited
22 at BlockFi remain at BlockFi. I think we put in our papers
23 that we can see some of them are not present anywhere at the
24 debtors.

25 But I think that, like Mr. Kanowitz says, we're not

1 going to object or put the Government on to prove their
2 indictment or anything like that. You know, that is not facts
3 that we're contesting. We're contesting what the legal effect
4 was of the seizure warrant given the structure of how BlockFi
5 set up its accounts and if delivering the seizure warrant
6 actually gave the Government title to, you know, bitcoins or if
7 it gave the Government title to a note that essentially read
8 IOU one bitcoin, signed Zac Prince.

9 And so assuming that the Government is not looking to
10 prove that the specific bitcoins deposited remain at BlockFi, I
11 think that we're going to have undisputed facts. If the
12 Government wants to attempt to trace the bitcoins, I think
13 we're all going to need a little more time but I suspect that
14 we're going to find that those went to Alameda Research.

15 And the only other thing I would note is, you know,
16 the Committee was appointed by the Department of Justice and
17 what has given fiduciary obligations by the Bankruptcy Code and
18 we don't appreciate the veiled threat that the Committee is
19 committing a crime here by seeking to discharge its fiduciary
20 duties.

21 THE COURT: Fair enough.

22 MR. SHAPIRO: On the other hand, Your Honor, in the
23 Third Circuit the Committee doesn't have standing yet to pursue
24 any claims and it doesn't have standing to pursue anything in
25 the Washington District Court so I mean we reserve our right to

1 object to that and the motion papers as well and we'd be glad
2 to try to work out a stipulated record and if we can, then I
3 think Mr. Kanowitz is correct, it will be a relatively short
4 hearing, probably no longer than two hours. But if we can on
5 particular fact that the Criminal Division feels has to be
6 presented, then we may have to subpoena somebody from the
7 debtor to take the stand or maybe even bring in someone, you
8 know, who works for the Government.

9 THE COURT: Well, for planning purposes I will
10 accommodate. I am out traveling on the 14th but I'll make sure
11 I'm back for the 15th but we'll schedule this for the afternoon
12 on the 15th.

13 MR. SHAPIRO: Okay, thank you, Your Honor. Thank
14 you.

15 THE COURT: Assuming it's legal argument, the rule I
16 have is attorneys are always welcome to come into court. In
17 fact, I always favor appearances but I understand traveling
18 issues. I'm happy to undertake this by Zoom unless we are
19 having an evidentiary hearing. If we're going to have a
20 witness, then I'm going to require that it be done live and in
21 person. I don't foresee that as being required. I'm sure you
22 can come up with stipulated facts and then argue off those
23 facts. If we have to spill in, God forbid, spill into the
24 Friday, the following day, we can, but we'll set it for one
25 o'clock on the 15th as a return date. Ah, I'm getting a note

1 from people who know better.

2 (Court/clerk discussion)

3 THE COURT: If you don't mind, let's try to do this
4 at two o'clock.

5 MR. SHAPIRO: Thank you, Your Honor.

6 THE COURT: I've already moved things to one o'clock.
7 Maybe we'll move them up a little bit and so I'll give you
8 enough time. I understand lawyers, two hours is usually at
9 least three to four hours but we'll get it done that afternoon.
10 If there can be further discussions, and I know the debtor has
11 undertaken this with DOJ and they've done well at it to date,
12 if you can accommodate and get yourselves more time and get the
13 Court more time, the Court will endeavor to accommodate as far
14 as calendaring if you want to push this a little further on.

15 MR. AULET: And, Your Honor, the only other thing I'd
16 note, we'll continue discussions with the DOJ but we may need
17 to seek emergency relief if the hearing on the motion to compel
18 continues to go forward on the current schedule. I just wanted
19 to make sure that that was noted for Your Honor.

20 THE COURT: I'm a phone call away. I think you've
21 all discovered that.

22 MR. SHAPIRO: Thank you, Your Honor. I also would
23 like to just note that the Government is not consenting to
24 jurisdiction here and we reserve our right to argue in our
25 motion to dismiss or answer if it comes to that, that the Court

1 does not have jurisdiction over these particular assets.

2 THE COURT: By all means and I don't take offense.

3 Bear with me one second.

4 COURT CLERK: You have one hearing scheduled for
5 today. It's a motion to seal that we understood was going to
6 be adjourned. Do we have a new date for that?

7 MR. KANOWITZ: And just one other issue, Judge?

8 THE COURT: It may be the same, but my clerk is
9 right. We got a motion to seal on for today. I don't know --

10 MR. KANOWITZ: That was --

11 THE COURT: -- if that was going to be adjourned. Do
12 you know how much time you need for that?

13 MR. AULET: Your Honor, I believe that we, the
14 debtors, and the U.S. Trustee had agreed that the motion to
15 seal which is the motion to seal the Committee's report --

16 THE COURT: Right.

17 MR. AULET: -- would be best heard some time after
18 the mediation so a date after June 6th.

19 THE COURT: All right. We have a BlockFi disclosure
20 statement here whatever that's worth at this juncture on for
21 June 20th. Why don't we just put it on for that date and we
22 can move it as needed?

23 MR. AULET: That works for the Committee, Your Honor.

24 THE COURT: All right, thank you.

25 Mr. Kanowitz, you had another issue?

1 MR. KANOWITZ: Well, Your Honor's order directed an
2 opposition to the motion by June 2nd so now that we're moving
3 the, you know, hearing date, I hate to be, you know, in
4 contempt of yet another order on this issue so I'd like to
5 request that we have an extension of time to answer.
6 Obviously, and I'm sure the Government wants the same, if we're
7 going to do a stipulated fact pattern which would be beneficial
8 to all, I think, it may take some time. You had us responding
9 within three days of the hearing. I'm happy to respond within
10 three days of the hearing. If the Committee thinks they need a
11 little bit more time to digest our papers, you know, I'm okay
12 too. But I think we should agree on a date so that we don't
13 have another --

14 THE COURT: I think that makes sense. I can put out
15 there June 12th which is a Monday, that way hopefully not
16 ruining anybody's holiday weekend as well.

17 MR. KANOWITZ: Close of business by June 12th is fine
18 for us.

19 THE COURT: Mr. Aulet, that works?

20 MR. SHAPIRO: That is fine for the Government, Your
21 Honor. Thank you.

22 THE COURT: Mr. Shapiro, thank you.

23 Mr. Aulet?

24 MR. AULET: Their papers being filed by close of
25 business on June 12th works for the Committee, Your Honor.

1 THE COURT: That's fine. I'll expect something on
2 the evening of June 14th in response, I have no doubt.

3 All right, I do appreciate everybody's candor and
4 professionalism. I understand the competing positions. And as
5 we started out, these are interesting and challenging issues
6 and will continue to be so, so I look forward to we'll call it
7 further education. Take care, folks.

8 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

9 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

10 * * * * *

12 **C E R T I F I C A T I O N**

13 I, MARY POLITO, court approved transcriber, certify
14 that the foregoing is a correct transcript from the official
15 electronic sound recording of the proceedings in the above-
16 entitled matter and to the best of my ability.

17

18

19 /s/ Mary Polito

20 MARY POLITO

21 J&J COURT TRANSCRIBERS, INC. DATE: May 26, 2023

22

23

24

25